

The issue is whether appellant is entitled to wage-loss compensation beginning January 22, 2004 due to his accepted emotional condition.

FACTUAL HISTORY

This is the second appeal in this case.¹ By decision dated November 27, 2006, the Board remanded the case for further development. The facts of this case, as set forth in the prior decision, are incorporated herein by reference.

On August 26, 2003 appellant, then a 51-year-old supervisory transportation security screener, filed an occupational disease claim alleging that he sustained an emotional condition and chest pain due to harassment at work. He was treated in an emergency room on that date for depression and atypical chest pain. Appellant indicated that on August 26, 2003 he became embarrassed while thinking about the tasks he had been assigned the previous few weeks, tasks that he did not usually perform. He alleged that on February 7, 2003 Aloycia Woods, another supervisor, loudly and repeatedly called him an “asshole” and told him to “kiss her ass” in front of passengers and coworkers.² Appellant alleged that management falsely accused him of sexual harassment, accused him of submitting timecards without a supervisor’s signature and of being late to work, assigned tasks that he disliked, informed him on short notice that he would have to work another week without a day off and contacted him numerous times while he was on administrative leave. On August 26, 2003 he was placed on administrative leave.³ In a statement of accepted facts dated August 11, 2004, the Office stated that the February 7, 2003 incident with Ms. Woods occurred in the performance of duty.⁴ Effective January 22, 2004, appellant was terminated from his job for unprofessional and inappropriate conduct and failure to follow instructions.⁵ He did not file a grievance or otherwise challenge the termination. In a report dated September 7, 2004, Dr. Russell Prince, a psychiatrist and Office referral physician, diagnosed major depression, severe, without psychotic features caused by the accepted employment factor, the February 7, 2003 incident involving Ms. Woods. On September 17, 2004 the Office accepted appellant’s claim for major depression, severe, without psychotic behavior.⁶

On October 25, 2004 appellant filed a claim for wage-loss compensation on and after January 22, 2004, citing his removal from his job. On November 3, 2004 the Office noted that

¹ See Docket No. 06-1473 (issued November 27, 2006).

² In a written statement submitted November 17, 2003, appellant indicated that the incident with Ms. Woods occurred on March 17, 2003. However, in statements submitted January 13 and April 22, 2004, he stated that the incident occurred on February 7, 2003.

³ It appears that appellant was placed on administrative leave following a disagreement with management concerning his request to visit the airport medical clinic, instead of his own physician, and his request for claim forms.

⁴ The record shows that appellant later accepted an apology from Ms. Woods and was satisfied that the February 7, 2003 incident was resolved.

⁵ The employing establishment described numerous specific incidents of unprofessional and inappropriate conduct, including dates, times, the individuals involved, what occurred and the reasons that appellant’s conduct was deemed to be unsatisfactory.

⁶ The Office indicated that the date of injury was March 17, 2003. However, as noted, appellant subsequently stated that the incident with Ms. Woods occurred on February 7, 2003, not March 17, 2003.

appellant was removed due to his unsatisfactory job performance, not because of his accepted injury occurring on February 7, 2003.

By decision dated March 4, 2005, the Office denied appellant's claim on the grounds that he failed to establish that his disability beginning January 22, 2004 was due to his accepted emotional condition. The Office noted that his claim was accepted for the single incident that occurred on February 7, 2003 when Ms. Woods called him an asshole in public while he was on duty. It stated that his chest pain experienced on August 26, 2003 was not accepted as work related because the factor he cited, feeling embarrassed about the duties he was asked to perform, was not determined to be a compensable employment factor.

On March 22, 2005 appellant requested an oral hearing that was held on February 15, 2006. In a February 22, 2006 written statement, he reiterated his allegations of harassment from management and submitted copies of disciplinary actions taken against him. By decision dated May 3, 2006, an Office hearing representative affirmed the March 4, 2005 decision. In a prior appeal, the Board set aside this decision and remanded the case.

Following remand of the case by the Board, the Office issued a February 23, 2007 decision denying appellant's claim on the grounds that the factual evidence failed to show that his disability beginning January 22, 2004 was due to the one accepted compensable employment factor, the incident on February 7, 2003 with Ms. Woods. The Office noted that appellant was terminated for unsatisfactory job performance as of January 22, 2004.

On March 12, 2007 appellant requested a review of the written record. By decision dated July 16, 2007, an Office hearing representative considered newly obtained medical evidence and affirmed the February 23, 2007 decision.⁷

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with employment but nevertheless does not come within the coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁸ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.⁹

⁷ Subsequent to the July 16, 2007 Office decision, appellant submitted additional evidence. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

⁸ 5 U.S.C. §§ 8101-8193.

⁹ *Lillian Cutler*, 28 ECAB 125 (1976).

Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.¹⁰

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors of employment, which may be considered by a physician when providing an opinion on causal relationship, and which are not deemed compensable factors of employment and may not be considered.¹¹ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.¹² As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.¹³ Where the claimant alleges compensable factors of employment, he must substantiate such allegations with probative and reliable evidence.¹⁴ When the matter asserted is a compensable factor of employment and the evidence of record establish the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.¹⁵

ANALYSIS

On October 25, 2004 appellant filed a claim for wage-loss compensation on and after January 22, 2004, citing his removal from his job as the reason for his disability. The record shows that the employing establishment terminated him effective January 22, 2004 due to his job performance, not because of his accepted injury occurring on February 7, 2003. In the January 14, 2004 removal notice, the employing establishment described specific incidents of inappropriate conduct and failure to follow instructions, including dates, times, the individuals involved, what occurred and the reasons that appellant's conduct was deemed to be unsatisfactory. Appellant did not grieve the termination. There is insufficient evidence that the employing establishment erred or acted abusively in terminating appellant's employment effective January 22, 2004. Therefore, this allegation is not deemed a compensable factor of employment.

¹⁰ *Michael Thomas Plante*, 44 ECAB 510 (1993).

¹¹ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹² *Margaret S. Krzycki*, 43 ECAB 496 (1992).

¹³ *See Charles E. McAndrews*, 55 ECAB 711 (2004).

¹⁴ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

¹⁵ *See Charles D. Edwards*, 55 ECAB 258 (2004).

Appellant failed to establish that his disability beginning January 22, 2004, the date he was terminated from his job, was causally related to a compensable factor of employment. Therefore, the Office properly denied his claim.

CONCLUSION

The Board finds that appellant failed to establish that he is entitled to wage-loss compensation beginning January 22, 2004 due to his accepted emotional condition.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 16 and February 23, 2007 are affirmed.

Issued: March 25, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board